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## PHILOSOPHY AND THE NEW JUSTICE.<sup>1</sup>

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### I.

IN ITS primitive form, justice was the assignment of rights and duties in terms of the groups to which persons belonged. There was a justice for the tribal member and a justice for the stranger, a justice for the conqueror and a justice for the conquered, a justice for the noble-born and a justice for the serf, a justice for men and a justice for women. What was humanly due an individual, in brief, had relation not to his personal merit or power or achievement but to the comparatively accidental group-position which he held.

To the modern mind such an assignment of rights is, in its grosser forms at least, wholly abhorrent. The matter has indeed passed beyond the stage of argument: the wrong of such an assignment is, to us, axiomatic. There is the instant awareness that justice must be measured in terms of the quality of the individual—his motives, merits, powers and achievements; must be measured, in short, in terms of natural, rather than of artificial considerations.

The history of our more recent civilization indeed has been little more than the prolonged effort to bring such

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<sup>1</sup> Read at the Joint Meeting of the American and Western Philosophical Associations at the University of Chicago, December 28, 1914.

“natural” justice to realization, to make rights fit deserts, to make obligations fit powers. In that effort, the most pressing need, historically, was to rid life of the burdensome system of conventional and arbitrary social distinctions. It was necessary to take away the unfair handicaps, to start men even in the race.

At the threshold of our own century, in America, it was deemed possible to do this by guaranteeing to all persons the protection of certain rights—“natural rights,” so-called. These were the broad rights to life, liberty, the pursuit of happiness, and the possession of the external means to happiness, property. Once these rights were adequately protected—and adequate protection meant on the whole the prevention of obvious restraints—it was assumed that “natural” justice would be accomplished, in the sense that every man, free to exert himself equally with every other, would secure life goods in direct proportion to his efforts and his worth.

The typical outcome of this view is the conviction prevalent in the democracies that a man is entitled to the opportunities and satisfactions which he can *afford*. The older group-principle entitled him to what his group-position assigned him. “If a Brahmin requires any article for a sacrifice which he cannot find handy, ‘he may take at his pleasure, two or three articles from the house of a Sudra, for a Sudra has no business with sacrifices.’”<sup>2</sup>

The ordinary democratic conviction, based upon the assumption that, with the removal of artificial restrictions, all persons start even in the race, holds that what a man wins he must win through his individual effort.

If this were a theory as to a desirable condition of life we might be able to accept it without serious question. But the noteworthy fact is that it is apparently, in large measure, a theory as to an actual condition of life. It is the conviction namely that all artificial hindrances of any considerable importance have, as a matter of fact, been removed; and that the resources of men, therefore, are a

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<sup>2</sup> Hobhouse, L. T., *Morals in Evolution*, I, 302. (*Manu.* ix, 13.)

fairly accurate index of the efforts which they have made in the running of their life race.

It may be objected that this is not in truth the modern conviction, that the thought is widespread among us that the riches or the poverty of men are an index not so much to the merit or demerit of individuals as to the good or ill luck of their placing in life, the advantages or disadvantages of their parentage and environment. And yet I feel that I am correct in saying that the prevalent modern conviction is that on the whole men get what they are capable of and should therefore get what they can afford. If this were not the conviction, it would be inconceivable that the glaring inequalities of condition and opportunity would be regarded with the comparative unconcern that is now almost universally in evidence. The street cleaner, to most of us, until we think sharply about it, is a poor stupid animal; the garbage man a person without the higher possibilities; the dwellers in tenements, the servants in our kitchens, are persons to whom indeed we owe pity; but they are to us really a "lower" class,—lower in capacity and power; and if they get less of life-goods, it is because they contribute less and so deserve less. The principle is more subtly in evidence in our acceptance of the fact, as a sheer matter of course, that one man has an income of a thousand a year and another an income of five thousand. We order our lives, in short, on the theory that men should be enabled to get and to possess what their resources will secure for them.

Without discussing at this stage the adequacy or the inadequacy of this widely prevalent conviction as to the just deserts of men, it is significant to note that a new conception, in promise profoundly reconstructive, has of late years quietly slipped into our social thought and organization. It is the conception that where individuals have fundamental *needs* which no exercise of their individual powers can adequately fulfill, these needs must be met by the organized resources of society. There is, for example, the need for a proper training of mind and body.

On the prevailing principle that each person shall have what he can afford, such training, with the necessary equipment of libraries, laboratories, teachers, etc., is completely beyond the reach of most persons. But such training is increasingly recognized to be a fundamental need, and therefore a fundamental right. Since then the individual through his unassisted powers cannot secure this essential need, it is deemed just that the collective power of society shall supply it to him; or, to express it more accurately, it is deemed just that he shall be permitted to join with his fellows to secure through joint action what he cannot singly secure.

Here is the thin blade of an entering wedge which threatens ere long to split asunder the whole block of our traditional assumptions as to the just relations between the life-goods which men may enjoy and the resources which they have at their command. For as we scrutinize the life-processes with an eye to discovering how many thoroughly essential needs are unfulfilled in individual lives precisely because the power of individuals is incapable of realizing them, we find them disclosing themselves in bewildering number.

There is, for example, the need for access to productive employment. If the provision for employment is a matter wholly within the control of the individual there is involved no further social obligation. But if, as is quite obvious, the organization of employment is largely beyond the control of the single person, the obligation rests with the collective body to make employment secure. The workers of to-day are therefore apparently right in their contention that the phenomenon of unemployment is a situation calling not for charity but for justice; for the awareness, in short, of an obligation on the part of society to meet a fundamental life need.

Again, there is a need for protection against a debilitating wage and debilitating conditions of labor. If the single person were able to protect himself, there would be no further obligation; but if industrial organization is such

that he has in himself no real protective power, the obligation is upon the collective body to secure him in his fundamental right. That society in this matter still places the *onus* upon the single person, compelling him, if he would protect his interests, to resort to various shifts of collective boycott and strike, is indicative apparently of the failure of modern society to realize as yet the precise nature of its just obligations.

It is in this connection that we view with such astonishment the decisions of the high courts of America pronouncing null and void laws passed to guarantee decent conditions of labor—eight-hour laws, laws requiring payment of wages in coin of the realm, laws requiring payment of wages on day of discharge, laws against sweatshop work, workmen's compensation laws, laws declaring the maximum of working hours for women, etc. In all these cases the courts, ostensibly acting for the good of individuals, have failed to realize that the good in question can be secured only through social means.

But the needs range farther and deeper. Physical health is a wholly fundamental need. It is here that the prevalent view that a man shall receive what he can afford has been most obviously in evidence. It has been taken for granted that a man might properly be expected, through his own resources, to look after his own health and the health of his family. Such a view is being in many ways challenged by present conditions of life. It may be said, I think, without error, that only a very small proportion of the illness of persons in present society is traceable to individual neglect or misuse of powers. Most illness is social in its origin, the causes being either compulsory overwork, insanitary surroundings, economic anxiety, unavoidable accident, or contagion. To cast the burden wholly upon the individual then is to fail to recognize this social origin of disease. But the difficulty cuts deeper. Where the responsibility for the protection of health is placed wholly upon the individual, misfortunes are suffered by dependent wives and children in a measure beyond

their power to avert. The child of a poor man falls ill. It is a case for a specialist, perhaps for a number of specialists. The "hire" of these experts is beyond the resources of the individual wage-earning parent, and as a result the child dies. Here obviously is an invasion of the fundamental right of this child to the protection of its life, a protection which it cannot itself secure, and which its parent cannot secure for it. I know of no more glaring example of the complacency with which modern society accepts its principle that to each shall be given what he can afford than the unprotected spectacle of wives and children who suffer and die in countless numbers simply because their husbands or fathers are unable to secure for them adequate medical service. Nor is the spectacle much less deplorable in the case of the family heads themselves, who, in many cases must suffer the slower or swifter invasion of disease because of economic inability to secure the requisite advice and care.

Modern medicine, moreover, exhibits more and more the principle of team-work—the co-operative efforts of specialists, nurses, analysts, etc., in the pursuit of the complex problems of organic disease. Access to such team-work is wholly beyond the resources of the ordinary individual. The alternative confronts us, therefore, of either suffering the individual to put up with what little of makeshift attendance he can afford, or of securing for him the more adequate service.

The thin edge is undoubtedly entering here. The collective organization of medical aid is already in evidence in the new type of medical boards, in medical inspectors of schools, school nurses, public clinics, public hospitals and sanatoria. It is in evidence, too, in a type of organization which promises, I think, to be of commanding importance in the future. At the University of California, I happen to know—and there are other instances throughout the country—the student body is so organized that by the payment of a small annual fee, each student is given the privilege of all the medical attendance and hospital

care which at any time he needs. Here is a pooling of resources which goes directly counter to the prevalent individualist principle of our modern life. It propounds the counter principle that through the co-operation of resources services shall be rendered as the needs dictate, not as the individual purse can afford.

Again, fundamental among the needs of men is the need for an impartial scrutiny of their rights at the bar of justice. The prevalent view has been that that scrutiny shall be very largely what men can afford to secure. The man with a regiment of attorneys has unquestionably an advantage over the man who with extreme self-denial can secure the services of but one overworked and mediocre minion of the law. Moreover, the man with abundant resources has a power of prosecuting appeals that is utterly beyond the power of the poverty-man. Here again new conceptions are slowly making headway. Society is indeed yet far from seeing the precise way out of its difficulties, but the prevalent scorn with which the old high-sounding phrase is now-a-days received that "all men are equal before the law," is indicative of a keen sense of the essential injustice of the present commercialized scheme of legal service. Unquestionably, the signs point to the same type of solution in this case as in the case of education and medical aid—the socialization of legal service, the co-operative pooling of resources so that all men may have equal access to legal advice and aid. In a partial sense, legal aid societies are pointing the new direction of legal organization. These societies employ attorneys *to serve the group*, and in so far give equal opportunity for legal aid to every member of the group. Here is the advance from a commercialized system of legal service which thrives upon the inequalities of men, which tends in fact to develop and perpetuate such inequalities to a socialized system of service organized in the spirit of equal opportunities before the law. "To plead the cause of justice," says Lowes Dickinson, "is a noble act; but to sell a knowledge of law to

the highest bidder, without reference to the equity of the case, is the meanest of all forms of barter.”<sup>3</sup>

## II.

A review of such fundamental needs as the foregoing—and there are many more to be found, as, for example, the right to be decently born, to choose occupation freely, to be protected against a purely sex discrimination, to be protected against trade deceptions, etc.—and a recognition of the ordinary inability of individuals by themselves to secure such needs will be sufficient to indicate the new type of services which modern society is in all justice obligated to render its members. But we have thus far touched only the outer edges of our problem. There is a growing conviction that the centre of the modern problem of justice is found in the fundamental economic relationships. Are the economic processes such that every person in present society receives his human due? The question is one that needs no explicit answer. Whether we analyze the economic situation with discriminating care or view it in its larger effects, the conviction is well-nigh universal that economic processes, as at present organized, are such that an equitable apportionment of reward is but rarely in evidence. And by apportionment of reward I mean not simply the distribution of money income, but the opportunity for the healthful and stimulating exercise of powers, the satisfaction in results accomplished, the joyous anticipation of work to be done. Here is the tragic aspect of modern civilization—the spectacle of powers suppressed, of interests thwarted, of eager possibilities ruthlessly murdered. Here unquestionably is the heart and soul of injustice. And as it is so, the strong savior of modern justice must be the organizer of economic ideas.

We witness here, however, a somewhat discouraging situation. The most vital problem of justice which we face to-day is, as we have said, the problem of economic

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<sup>3</sup> *Justice and Liberty*, p. 73.

reorganization; and yet I think I am not unfair when I say that the science which has gone by the name of economics is in its conventional form unable effectively to grapple with that problem. A careful scrutiny of the three master concepts with which the conventional economics deals—the concepts of utility, cost, and value—indicates that these are so neutrally defined as to make a human evaluation of the processes in which they are involved practically impossible. If, for example, as the conventional economics assumes, all desire-satisfying goods are utilities—the painting of a Rembrandt and the licentious pictures of a degenerate; if, again, all efforts are costs—the drudgery of a factory automaton and the creative effort of the poet or inventor; if, finally, value, in the prevalent economic sense, is measured wholly in terms of exchange possibilities, so that the value of a good book is no more than the value of a burglar's black-jack, it follows that, with such broad definitions of these basal concepts no discriminating human evaluation of the economic processes is possible. I am not passing a hostile criticism upon economics. I am stating a fact, a fact which economists themselves frankly admit. The same shortcoming is exhibited in the prevalent concern of economics with the productive aspects of industrial processes to the almost entire neglect of the distributive aspects.<sup>4</sup> It is obvious then that the great need of the present is for the development of a new type of economics, an economics that will so define its fundamental concepts and so organize its interests as at once to maintain the distinctly economic character of its inquiry and yet to give to this inquiry the quality and the power of human evaluation.

I think that without any question a new economics is forming, and that in the development of it the social philosopher will play no inconsiderable part. For there are many indications that economists are awakening to the essential inadequacy of their conventional psychology, that they are realizing the need for a reconstruction of their

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<sup>4</sup> Hobson, J. A., *Work and Wealth*, Chap. I. (Macmillan.)

ideas about the human personality that plays its part in economic processes. This is sharply expressed by a distinguished American economist in a recent number of the *Quarterly Journal of Economics*.<sup>5</sup> "It is because they are developing a sounder type of functional psychology," he writes, "that we may hope both to profit by and to share in the work of contemporary psychologists. But in embracing this opportunity economics will assume a new character. It will cease to be a system of pecuniary logic, a mechanical study of static equilibria under non-existent conditions, and become a science of human behavior."

An economics based upon a more adequate conception of human personality will, we may venture to expect, be far less tender than the conventional economics has been toward the ethically indefensible institutions of profit, rent and interest, toward the prevalent undemocratic form of business organization, and toward the privilege-breeding principles of inheritance and bequest. It will doubtless see in them factors that militate in a triple way against the realization of essential justice: first, in so far as they develop such inequalities of resource as in large measure to thwart human personality; second, in so far as they breed in the economic participants an attitude egoistic and anti-social; third, in so far as they deny to large numbers of persons any adequately vital participation in the economic processes and interests. The problem of economic justice for the new economics will be to bespeak such an organization of the industrial processes as will, in these three respects, meet the essential human needs.

### III.

From the foregoing discussion there has emerged the first part of the determinant principle of justice: to each person according to his needs. The principle, of course, has been expressed many times. I make no attempt in this paper to establish it but simply to set it forth. What is

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<sup>5</sup> Mitchell, Wesley C., November, 1914.

peculiarly of our own time in the above elaboration of it is the recognition that there are many needs which cannot be met by individual efforts and which must accordingly be fulfilled through the social organization of life resources. Here, I take it, is the aspect of justice which has gained the modern name of "social justice"—the exercise by society of its collective powers in support of the legitimate claims of individual life.

With this principle—to each according to his needs—goes, however, the essential correlate: from each according to his realized capacities. For obviously to meet fundamental needs is *ipso facto* to develop fundamental capacities and to give to society the right to claim their exercise. Where on the other hand, however, without blame to the individual, capacities are left undeveloped, there can be no just claim upon the individual for their use. In this respect I think it is quite obvious that present society demands of many of its members far more than their capacities warrant, and in so far treats its members with a more or less flagrant injustice. To demand that a man harassed and devitalized by conditions beyond his own control shall be the sole responsible support of his family, that he shall contribute a share to the society which permits his exploitation, is to demand beyond capacity. To demand again, as our law does, that a man without employment shall unprotestingly, with law-abiding mildness, witness the slow starvation of wife and children is to demand beyond human nature. These are indeed the more flagrant cases, but in all manner of ways the demands which society makes of its members pass beyond their capacity. Citizenship is demanded of men who were factory hands at twelve, motherhood of girls who were spinning at the looms in childhood, the replenishment of the race by men and women whose earnings are not sufficient to yield the decent things of life. Industry and application, a joy in work and a loyalty to tasks assigned are demanded of men and women too weary to care, too driven to do aught but obey. Thrift is demanded of men and women whose every saving is a

denial of the very necessities of life itself. A society which says "Thou shalt" is a society which should be able to say "Thou canst." A social order is therefore fundamentally unjust which makes no effort to proportion its demands to the capacities of its members. Such just proportioning may be accomplished either by the lessening of the social demand to meet the individual capacity, or by the increase of the individual capacity to meet the social demand. The fully matured society will pursue the latter course.

#### IV.

We come then to the essential difference between the older, eighteenth and nineteenth century conception of justice and the conception of justice which is increasingly gaining ground among us. The older justice suffered from an inadequate analysis of the human situation. Occupied in the main by the long prevalent restrictions of caste and class, it saw but the surface hindrances to human development. There must be no noble-born and base-born; every man must have the same essential right to life and liberty; every man must have a vote; politically every man must count for one and for no more than one; there must be power to protect all men against violence; property must be secure. So much accomplished, it was thought, men would go on freely to their own self-realization. It was on the one hand the ethics of comfortable landed gentry, on the other hand of idealists who had little knowledge of the more complex human situation. By neither were the possibilities of human interrelation adequately foreseen. In a simple community, such *laissez faire* as these genial-minded gentlemen propounded might disclose no serious difficulties; but in a more complex society such individualism of freedom was bound to meet its nemesis. Nor has the nemesis been simply material; it has as truly been spiritual. The economic and political individualism of the eighteenth and nineteenth centuries produced a type of character incapable, largely, of the fine power of participation in the wider life of its fellows. Such individualism

reached its spiritual consummation in the typical eighteenth and nineteenth century Protestantism: each man was assiduous in seeking his salvation; with the result that the Protestant church, in its social outlook and effort, became in large measure a lamentable failure.

The new justice involves simply a subtler and more far-reaching analysis of the human situation. It involves a recognition of the wholly inescapable social interrelations. It is for this reason that the dominant interest of modern society is no longer in "free will" (note how in philosophy the problem has almost completely faded away), but in "co-operation." \* So, in religion, I venture to say, where justice reaches its highest expression, the pre-eminent interest of the future will be no longer in an individual God and his individual relationship to individual destinies. It will be an interest in the indwelling "spirit of the group," the spirit of getting together and creating new opportunities rather than of accepting, each for himself, the "natural rights" assigned by a beneficent deity. What is significant about the older natural rights theory was that it assumed that God had given just so much of right to each man, and that that much was to be *protected*. The new theory of rights assumes that men together *create* their destinies, that rights grow as needs increase, and that these rights are not simply to be protected but to be nurtured and developed.

## V.

And here, I take it, the peculiar task of the philosopher discloses itself. The problem of justice is essentially the problem of estimating the fundamental human needs and capacities. Such estimates can be made only through a thorough understanding of the nature and scope of the human person. What is significant about the sciences that

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\* Baker, R. S. "In short, during the last few years in America we have been developing with all our energy the highest art of all arts—the art of living together. I believe this to be 'the one idea more powerful than any other' that is shaping the events of our time." *The New Republic*, Vol. I, No. 5, p. 21.

have occupied the fields of law, industry and politics is that they have had but a poor and restricted understanding of the human person. The American jurists who in recent years have argued with such lamentable lack of insight for freedom of contract, due process, etc., have been simply misled by their excessively individualistic psychology. The economists who, in the face of industrial stress and storm have clung to their theories of *laissez faire* and competition, of profits and interest, have been talking the language of a psychology individualistic and hedonistic. Attempting to organize a world of industry for human persons, they have known only a caricature of human personality. And finally the political scientists who, acquiescing in a larger individualism, have written their politics of nationalism in the conviction that group antagonism is the primal way of life, that preparation for offence is the best security for defence, have simply failed to note the larger movement of life toward co-operation. They have failed to note in short that life secures itself most effectively, most justly, by organizing its forces in friendly union, rather than by disorganizing its forces in suspicious antagonism.

To-day, in large measure, politics are stupid; industry is cruel; law is unjust; and in the main, I take it, because in politics, industry and law there has been as yet no adequate understanding of the function and larger scope of human personality.

Here then is the peculiar task of the philosopher of to-day. Equipped with the resources of a profounder psychological, sociological and ethical insight, it is possible for him—and I take it for him alone—to indicate the wider, co-operative possibilities of human nature. I have devoted much space in the foregoing pages to depicting certain needs of human personality that must be met through social action. There is one need that as yet I have mentioned only by the way, a need in which the philosopher however will be pre-eminently interested. It is the need for the development of a social type of consciousness, the

type of consciousness which is eagerly, joyously participant in common interests and common possessions. The socialization of human resources, I take it, is to serve not only as a means of more effectively supplying the physical needs of men; it is to serve likewise for the development of a new type of character, the character that has its pride in the group, its joy in the common possessions and activity of the group, its loyalty to the welfare of the group. From old philosophers have been interested in the "organic" self—the self in and of the life of its world. The lamentable failure of individualism in law, industry, politics and religion will give to the philosopher his long-deferred chance to develop his conception of the self that is truly organic with its world. This, I take it, is to be the philosopher's main contribution to the problem of justice, this, and in the light of it, the penetrating criticism of the categories basal to the social sciences. It is a contribution wholly fundamental in so far as the problem of justice is, as we have seen, nothing more nor less than the problem of understanding what human personality essentially requires and what it can contribute for its full development.

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